

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HARRY L. BIERLEY)	
Petitioner,)	
)	
vs.)	C.A. No. 04-363 ERIE
)	
WARDEN JAMES VESHECCO)	
Respondents.)	

RULE AND ORDER

AND NOW, this 13th day of October, 2005,

IT IS ORDERED that the United States Marshal shall make service of this order, together with a copy of the petition, upon the Respondent, the District Attorney of Erie County, and the Attorney General of the Commonwealth of Pennsylvania. It is Petitioner's responsibility to cooperate with the U.S. Marshal Service in this regard; Petitioner's failure to do so may result in the dismissal of this action for failure to prosecute. Costs shall be advanced by the United States of America.

IT IS FURTHER ORDERED that within twenty days of service of this order, the respondent, and the District Attorney of Erie County, Pennsylvania shall respond to the allegations of the petition for writ of habeas corpus. The District Attorney shall address all of the following 1) the statute of limitations, 28 U.S.C. § 2254(d)(1)-(2); 2) the exhaustion of state court remedies as required by 28 U.S.C. §§ 2254(b) and Picard v. Connor, 404 U.S. 270 (1971); Rose v. Lundy, 455 U.S. 509 (1982); United States ex. rel. Trantino v. Hatrack, 563 F.2d 86 (3d Cir. 1977); Zicarelli v. Gray, 543 F.2d 466 (3d Cir. 1976), with respect to each claim raised by the Petitioner and, if appropriate, whether any of the claims were procedurally defaulted, and 3) the merits of the petition. The answer shall comply with Rule 5 of the Rules Governing Section 2254 cases in the United States District Courts. The District Attorney shall furnish this court with the state court records, including all transcripts, all briefs filed by the Petitioner, and all

written opinions of the state courts/agencies as well as certified copies of the docket sheets of all the state courts/agencies involved.

IT IS FURTHER ORDERED that the parties are allowed ten (10) days from this date to appeal this order to a district judge pursuant to Rule 72.1.3(B) of the Local Rules for Magistrates. Failure to appeal within ten (10) days may constitute waiver of the right to appeal.

S/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
Chief United States Magistrate Judge

cc: District Attorney of Erie County
Attorney General of Pennsylvania